IN THE HIGH COURT OF JUDIATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.1915 OF 1987

A-1 Co-operative Housing
Soicety Ltd.
270, Walkeshwar Road,
Bombay 400 006. .. Petitioners.

Vs.

1. M/s.R.Jaikishan & Co.
270, Walkeshwar Road,
Bombay 400 006. ..
2. Rajmal N.Javeri, Flat No.III,
11th Floor, & Smt.Padma R.Javeri ..
3. Sirish R.Javeri and
Smt.Sushma R.Javeri,
11th Floor, Flat No.112 ..
4. Vinay R.Javeri,
11th Floor, Flat No.113 ..
5. Sunil R.Javeri
11th Floor, Flat No.114 ..
7. Dharamsey Trikamdas &
Smt.Chandravati Trikamd
11th Floor, Flat No.116 ..
9. Rajendra Dinkerrai Joshi
11th Floor, Flat No.118
A-1 Apartments, 270,
Walkeshwar Road,
Bombay 400 006. ..
10. Shri L.M.Patil, Member of
Maharashtra State Co-operative
Appellate Tribunal ..
11. Shri J.S.Patil, Judge, II
Co-operative Court, Contractor
Building, 2nd Floor, Ballard
Estate, Bombay .. Respondents.

Mr.Anil Sakhare with Mr.Dinesh P.Shah with Monik Khade for the petitioners.

Mr.Y.S.Jahagirdhar with Mr.K.R.Dhanuka with Mr.J.P.Dhanuka for respondent no.1.

Mr.P.V.Sawant with Mr.Navnath Patil for respondent nos.2 to 9.

ALONGWITH

WRIT PETITION NO.1585 OF 1987

M/s.R.J.Krishna & Co.
270, Walkeshwar Road,
Bombay 400 006 .. Petitioners.

Vs.

1.A-1 Co-operative Housing
Society Ltd. A-1 Apartments
Ground Floor, 270, Walkeshwar
Road, Bombay 400 006 ..
2(a) Shri Rajmal M.Jhaveri ..
(b) Smt.Padma R.Jhaveri
both at Flat No.111, 11th Floor ..
3(a) Shri Shrish R.Jhaveri ..
(b) Smt.Sushma R.Jhaveri
both at Flat No.112 ..
4. Shri Vijay R.Jhaveri
at Flat No.113 ..
5. Shri Sunil R.Jhaveri
at Flat No.114 ..
6(a) Mansingh Trikamdas Asher ..
(b) Krishnakant Trikamdas Asher
both R/o 458/468, Jadhavji
Karakachhi, Bhatia Bldg.,
3rd Floor, R.No.46, Jagannath
Shankarseth Road, Girgaum,
Bombay 400 002. ..
(c) Mrs.Chandravati nee Trikamdas
R/o Flat No.116, 11th Floor,
A-1 Co-operative Housing Society
A-1 Apartment, 270, Walkeshwar
Road, Bombay 400 006. ..
8.(a) Dinkarrai S.Joshi
11th Floor,270, Walkeshwar Road,
Bombay 400 006. ..
(b) Jaywant Dinkarrai Joshi
96, Adarsha Co-op. Hsq. Society
Athwa Lines, Surat ..
(c) Barat Dinkarrai Joshi
Shyam Niwas Co-op. Society
Flat No.6, Bldg.No.8, 6th floor,
Bhulabhai Desai Road, Bombay ..
(d) Rajendra Dinkarrai Joshi
11th floor, 270, Walkeshwar Road
bombay ..

(e) Mrs.Jyoti Ashok Kothari
(married daughter) 98, Adarsha
Co-op. Hsq. Society, Athwa lines,
Surat ..
(f) Ms.Nuta Dinkarrai Joshi
Asian Patk Apartment, Flat No.1,
B-Adarsh Society, Athwa Lines,
Surat ..
10(a) Smt.Shakuntaladevi
D.Parasrampuria ..
(b) Mr.Arun Kumar D.Parasrampuria ..
(c) Smt.Ushadevi R.Jhunjhunwala ..
(d) Smt.Sudhadevi S. Berlia ..
(e) Smt.Umadevi Anandkumar Jain ..
(f) Smt.Rashmidevi Rajendra Padia ..
(g) Smt.Neetadevi Padamkumar
Singhania
being their Power of Attorney
holder Respondent No.10(b) having
their address at B-2, 11th Floor,
Matru Ashish Co-op. Hsg. Society
Ltd. Napean Sea Road,
Mumbai 400 036.
11. Mr.Beniprasad Parasrampuria
6th floor, Rewa Apartments,
Bhulabhai Desai Road,
Bombay 400 026. ..
12. Mr.Ratanlal Parasrampuria
14th floor, Rewa Apartments,
Bhulabhai Desai Road,
Bombay 400 006 ..
13. Mr.Omprakash Parasrampuria
16th floor, Rewa Apartments,
Bhulabhai Desai Road
Bombay 400 006 ..
14.Mr.Krishankumar Parasrampuria
A-1 Apartments, Flat No.40,
270, Walkeshwar Road,
Bombay 400 006 ..
15. Mr.Biharilal Parasrampuria
C/o.Sanjiv Builders Pvt. Ltd.
Ring Road, Surat ..
16. Mr.Satishkumar Parasrampuria
Building No.1 above Central
Bank of India, Sundernagar
S.V. Road, Bombay 400 064 ..
17. Shri L.H.Patil the member of
Maharashtra Co-operative Appellate
Court, ..
18. Shri J.S.Patil, Judge,
II Co-operative Court, Bombay .. Respondents.

Mr.Y.S.Jahagirdar with Mr.K.R.Dhanuka with
Mr.J.P.Dhanuka for the petitioners.

Mr.A.Y.Sakhare with Mr.Dinesh P.Shah with
Ms.Monik Khade for respondent no.1.

Mr.V.P.Sawant with Mr.Navanath R.Patil for
respondent nos.2 to 5.

CORAM : D.B.BHOSALE, J.

DATED : 8TH SEPTEMBER, 2004

ORAL JUDGMENT:

. Heard Mr.learned counsel for the petitioner and Mr.learned counsel for the respondent.

2. These two writ petitions arise out of the common judgment and order dated 21.7.1986 rendered by the Co-operative Appellate Court by which three revision applications were disposed of. The first revision application was filed by the disputant (for short "the firm") who is respondent no.1 in the first Writ Petition No.1915 of 1987 and the petitioner in the second Writ Petition No.1585 of 1987. The second revision was filed by original opponent no.1 - society (for short "the society") who is the petitioner in the first petition and respondent no.1 in the 2nd petition. The third revision was filed by the original opponent no.2 to

9 who are respondent nos.2 to 9 in both the petitions (for short "respondent nos.2 to 9"). All three revisions were filed against the judgment and order dated 23.4.1986 passed by the Co-operative Court in the application seeking amendment of the dispute filed under section 91 of the Maharashtra Co-operative Societies Act, 1960 (for short "the Act") bearing Arbitration Case No.CC/II/537/1870 of 1973 by which the said application was partly allowed.

3. The factual matrix that would be relevant and material for deciding the questions raised and involved in these two petitions is as follows: The firm filed a dispute application claiming various reliefs. The sum and substance of the reliefs claimed by the firm is that the society and the opponents be ordered and directed to complete the construction of the flats on the 10th floor and the garages on the ground floor and also the ground floor flats, the recreation hall etc. and handover possession thereof to the firm and their licencees as provided in the agreement dated 25.9.1963 and further that opponent nos.2 to 9, who are in occupation of the said flats be ordered to vacate the same. They have also prayed for damages from

the society. In effect, the firm has prayed for specific performance of the agreement dated 25.9.1963 entered into between them and the society and wherein the society had agreed to complete the construction and to handover the possession thereof to the firm. Respondent Nos.10 to 16 in Writ Petition No.1585 of 1987 are the beneficiaries-licencees (for short "Respondent Nos.10 to 16") of the petitioner-firm, who were named in the agreement of 1963 and, according to the firm, are entitled for their rights created under the said agrement. I will not like refer to the facts in detail as, in my opinion, they may not be necessary for deciding the questions involved in the instant writ petitions.

4. The evidence in the instant case started with recording of the examination in chief of one Ratanlal on behalf of the firm on 4.8.1981 which concluded some time in 1985. Two more witnesses were examined in 1985, and the firm closed their evidence. The society started leading their evidence with the examination of one Tulsidas Sharma on 1.11.1985 and while his evidence was being recorded on 10.2.1986 the application was filed by the firm for amendment. The amendment was

opposed by the society on various grounds. I am consciously avoiding to make reference to the amendment in view of the fact that merits of the amendment have not been challenged and even otherwise need not be considered at this stage. The amendment has been challenged only on two grounds to which I would be making reference while dealing with the submissions of Mr.Sakhare, learned senior counsel for the society. The amendment application was partly allowed by the Co-operative Court vide the order dated 23.4.1986 against which, as stated earlier, three revision applications came to be filed before the Co-operative Appellate Court. In all three revision applications the order of the trial court had been modified which is being challenged in these two petitions.

5. I heard learned senior counsel for the firm and the society as also Mr.Sawant, learned counsel for respondent nos.2 to 9 at length. It may be noticed that respondent nos.2 to 9 have not challenged the order dated 21.7.1986 passed by the Appellate Court in their revision. With the assistance of the learned senior counsel for the parties I perused the impugned judgments and other material placed for my consideration.

5.1. Mr.Sakhare, learned senior counsel for the society at the outset submitted that he is not assailing the merits of the amendment and, therefore, confined his arguments only to the propriety and legality of the judgment by which substantial amendment has been allowed by the courts below. He challenged the amendment on two grounds. Firstly, there was inordinate delay in filing the application for amendment and secondly, that under the guise of subsequent events the firm has attempted to fill in the lacunas in the original pleadings. He further submitted that order of Co-operative Courts allowing amendment is without jurisdiction inasmuch as the Co-operative Courts have no powers to entertain the application seeking amendment of the dispute.

5.2. On the other hand Mr.Jahagirdar, learned senior counsel for the firm took me through the impugned judgment contending that respondent nos.10 to 16 being beneficiaries of the agreement of 1963 would be necessary party in the instant proceedings. In so far as the submission of Mr.Sakhare, learned senior counsel for the society, that amendment to the dispute under section 91 is

impermissible is concerned, he contended that principles of the Civil Procedure Code (for short "CPC") would apply whenever the Co-operative Courts find that the Act and the Rules are totally silent. He further submitted that there is no express power conferred on the Co-operative Courts to allow the amendment of the dispute or written statement and, therefore, they can allow the party to amend the pleadings by applying the principles of CPC.

5.3 Both the learned senior counsel appearing for the parties placed reliance on the judgments of this court and endeavoured to read them in support of their contentions. Heavy reliance was placed on the judgment of this court in **Murlidhar Datoba Nimanka and Others Vs. Harish Balkrushna Latane and Others 2003(4) Mh.L.J. 196, Bharat Co-operative Bank Ltd. & Others Vs. R.K.Suvarna & Others 1997(1) ALL MR 193.** In addition, Mr.Sakhare also placed reliance upon the judgments of this court in **P & T Central Co-operative Society Ltd., Nagpur and Others Vs. Judge, Co-operative Court, Nagpur and Others 1987 Mh.L.J.232** and the judgment of the Apex Court in **Rameshwar and Others V. Jot Ram and Others AIR 1976 SC 49**. Mr.Sawant, learned counsel for respondent nos.2 to 9 adopted the

submissions of Mr.Sakhare and in addition placed reliance upon the judgment of the Apex Court in **Sampath Kumar Vs.Ayyakannu and Anr. (2002) 7 Supreme Court Cases 559.**

6. Firstly, I would consider the question of law raised by the learned senior counsel appearing for the parties as to whether the Co-operative Courts have powers to allow the parties to the dispute filed under section 91 of the Act to amend the pleadings i.e. the dispute and the written statement by applying the principles of CPC. In other words, whether the parties to the dispute under section 91 could be allowed to amend the pleadings by applying the principles laid down by the Apex Court and High Courts while dealing with the provisions of Order VI Rule 17 of the CPC since the Act and the Rules are totally silent in so far as the amendment to the pleadings is concerned.

7. This court in **Murlidhar Datoba** (supra) has elaborately considered the scheme of the Act while dealing with the question as to whether the Co-operative Courts are governed by the provisions of the CPC and whether in the absence of provisions similar to the CPC either in the Act or in the

Maharashtra Co-operative Societies Rules, 1961 (for short "the Rules") can the Co-operative courts exercise the powers of the Civil court specified under CPC. The aforestated issues arose for consideration before the learned Single Judge while dealing with the issue involved in the said case as to whether or not the provisions of Order 39 Rule 11 of CPC are applicable to the Co-operative Court in view of various specific provisions contained in the Act and the Rules. This issue was addressed by the learned Single Judge and while doing so he considered the entire scheme of the Act and ultimately answered the issue in negative holding that the Co-operative Courts are not armed with powers under Order 39 Rule 17 of CPC and in view thereof the impugned order in the said case was quashed and set aside by which the defence was struck off by the Appellate Court.

7.1. It is against this backdrop the learned Single Judge in paragraph 22 and 23 observed thus:

> "22. The Legislature in its wisdom has specifically avoided to apply the provisions of Civil Procedure Code to

follow the rules of procedure followed by the Civil Courts under Civil Procedure Code in specified situations and not in each and every case. Besides, it is to be noted that the reference to the manner relating to the enforcement of attendance of witnesses and the production of evidence similar to one in case of Civil Court has been made subsequent to the specific provision regarding the requirement of hearing the dispute in the manner as prescribed under the said Act".

"23. Undoubtedly, merely because the section restricts the applicability of such principles only in relation to the enforcement of attendance of witnesses and recording of evidence oral or documentary, it cannot be also said that the principles of Civil Procedure Code would not apply even in case where the said Act or the said Rules are totally silent. Nevertheless, it will be only in relation to the procedure to be followed and when absolutely necessary for the purpose of disposal of the dispute and in the interest of justice,

some of the examples of applicability of principles of Civil Procedure Code to the proceedings before the Co-operative Courts can be in relation to power to frame and alter the issues in terms of Order XLV, amendment of award when any clerical or arithmetical mistakes or error arising therein from any accidental slip or omission is brought to its notice in terms of section 152 of Civil Procedure Code or following the procedure prescribed for the adjudication of main disputes, in case of miscellaneous proceedings therein in terms of section 141 of Civil Procedure Code. These are some of the some of instances in which general principles of Civil Procedure Code would be attracted and can be followed by the Co-operative Courts. However, it will not include the jurisdiction to exercise various powers specifically given to the Civil Court which otherwise are not normally available to any Tribunal or quasi judicial authorities. Inherent power which is available to the Civil Court under section 151 cannot be presumed to be available to the Co-operative Court in the

absence of specific provision in that regard under the said Act. Similarly, the Co-operative Court is not entitled to exercise the powers of review under Civil Procedure Code in the absence of specific provision in that regard in the statute under which it is constituted. Being so, merely because section 114 and Order 47 makes the provision for review power of the Civil Courts under the Civil Procedure Code, it cannot be said that the Co-operative Court would be entitled to exercise the same power in the absence of similar provision in that regard in the said Act and the Rules. It is settled law that the Courts which are constituted under special Statutes can function within the scope of the powers given to such Courts under the Act under which they are constituted and they cannot travel beyond such powers".

7.2 It is, thus, clear that merely because the section restricts applicability of the principles of CPC only in relation to the enforcement of the attendance of the witnesses and recording of the

evidence oral or documentary, it cannot be said that the principles of CPC would not apply even in case where the said Act or the said Rules are totally silent. However, it does not include the powers specifically given to the Civil Court which otherwise are normally not available to any tribunal or quasi-judicial authorities such as inherent power which is available to the Civil Court under section 151 cannot be presumed to be available to the Co-operative Court in the absence of specific provision in that regard under the said Act.

7.3 In **Bharat Co-operative Ltd.** (supra) this court was dealing with almost similar situation when the following issues were considered: (a) Whether an amendment, which alters the terms of reference forming the basic dispute put forward before the Co-operative Court, can be permitted ? and (b) Whether the Maharashtra State Co-operative Appellate Court has power to entertain an appeal and order of the Trial Court allowing or rejecting an amendment ?, and while dealing with these issues in paragraph 10 the learned Single Judge observed thus:

. "Section 91 of the Act envisages the raising of a dispute which is required to be settled in accordance with the procedure prescribed in Chapter IX of the Act. In a manner of speaking, the interference is the substratum of the dispute which is to be adjudicated by the Co-operative Court. Unless there is express power in the Co-operative Court to alter the terms of reference themselves, it must be held that any amendment which would touch the substratum of the dispute to be adjudicated under section 91 of the Act is impermissible. Section 94 of the Act indicates the procedure for settlement of disputes and power of the Co-operative Court. Some of the powers indicated in this section are comparable to the powers exercised by the Civil Court exercising jurisdiction under the Code of Civil Procedure. However, all powers exercisable by the Civil Court under the Code of Procedure are not vested in the Co-operative Court, since it is only a creature of statute and not a Court of plenary jurisdiction".

7.4 It is, thus, clear that unless there is express power in the Co-operative Court to alter the terms of reference themselves, it must be held that any amendment which would touch the substratum of the dispute to be adjudicated under section 91 of the Act is impermissible. In other words, the amendment which touches the substratum of the dispute or nature of the dispute is impermissible.

7.5 This Court in **P and T Central Co-operative Society Ltd.** (supra) has observed that there cannot be any doubt that a procedure provided in the CPC would apply to the proceedings before the Co-operative Court as far as it can be made applicable.

7.6 The Apex Court in **R.C.Tiwari Vs. M.P.State Co-operative Marketing Federation Ltd. and Others (1997) 5 SCC 125** has clearly held that the principles of res judicata do apply to the Registrar under M.P.Co-operative Societies Act, 1960. Similarly, this court in unreported judgment dated 9.1.1976 in **M/s.Bharat Sales Service and Another Vs. Shyam Co-operative Housing Society Ltd. and Others** in paragraph 4 thereof observed

that the Co-operative Society can apply for transposition of the party to the dispute suggesting thereby that the principles of CPC are applicable to the proceedings before the Tribunal.

8. The provisions of the Act and the Rules are oblivious of amendment of the pleadings i.e. dispute and written statement. However, they do not specifically rule out or preclude Co-operative Courts from granting the amendment of the pleadings. Sub-section 3 of section 94 of the Act confers power on the court that if it is satisfied that a person whether he be a member of the society or not has acquired any interest in the property of a person who is a party to a dispute, it may order, that the person who has acquired the interest in the property may join as a party to the dispute; and any decision that may be passed on the reference by the Court shall be binding on the party so joined, in the same manner as if he was an original party to the dispute. Section 94, however, is silent about the powers of the Court to allow the parties to amend the pleadings.

8.1 In **Murlidhar Datoba's** case (supra) this court after considering all the provisions relating

to the procedure to be followed by the Courts under the Act and the Rules observed "that they would lead to the conclusion that the same shall be necessarily as prescribed under the said Act and the said Rules, though in the specified circumstances it may be as far as possible in consonance with the procedure followed by the Civil Courts under the Code of Civil Procedure and in that connection, the principles of Code of Civil Procedure are to be borne in mind. Obviously, a specific provision in that regard was requried to be made since Legislature in the said section itself has stated that the procedure to be followed shall be as prescribed. Meaning thereby in the absence of specific provision regarding enforcement of attendance of witnesses and recording of evidence - oral or documentary being provided in the said Rules, the principles of Code of Civil Procedure in that regard will have to be applied.

9. The position that emerges from the above discussion is that in the absence of a specific provision in the Act and the Rule regarding amendment of the pleadings the principles of CPC in that regard will have to be applied and the Co-opertive Courts should allow an amendment of the

dispute under section 91 of the Act or the written statement if it is necessary for the purpose of determining the real question and controversies between the parties. Avoidance of multiplicity of the proceedings is also one of the relevant considerations. While allowing the amendment the Courts will have to bear in mind that it is not altering the terms of reference/dispute or it is not touching the substratum of the dispute to be adjudicated under section 91. The power of allowing or rejecting the amendment can be exercised at any stage of the proceedings, depending upon the facts in each matter, in accordance with the guidelines laid down by the High Courts and Supreme Court in the various judgments. It is true that the amendment cannot be claimed as a matter of right and in all circumstances. But it is equally true that the courts while deciding such prayers shall not adopt hypertechnical approach.

9.1 The Apex court in **Sampath Kumar's** case (supra) has made it clear that basic structure of the suit should not be altered by the proposed amendment. This court in **Quality Polly Closures Vs. Executive Engineers, M.S.E.B., Satara** (supra)

while dealing with the provisions of Order 6 Rule 17 has observed that mere delay cannot be a ground to reject the amendment. The power to allow the amendment is wide and can be exercised at any stage of the proceedings in the interest of justice. Courts while deciding application to amend should not adopt hypertechnical approach. Liberal approach should be the general rule particularly in cases where the other side can be compensated by awarding costs. Technicalities of law should not be permitted to hamper the courts in the administration of justice between the parties. Similarly, the apex court in **Ragu Thilak D.John Vs. S.Rayappan and Others (2001) 2 Supreme Court Cases 472** has held that the dominant purpose of allowing the amendment is to minimise the litigation. The plea that the relief sought by way of amendment was barred by time is arguable in the circumstances of the case. The plea of limitation being disputed could be made a subject-matter of the issue after allowing the amendment prayed for. Similarly, the Apex Court in **Sampath Kumar's** case (supra) has reiterated the principle of law that the court has powers to grant amendment of pleading at any stage of the proceedings in order to avoid multiplicity of suits. It is further held that the merits of

the averments sought to be incorporated by way of amendment are not to be judged at the stage of allowing prayer for amendment. The Courts, therefore, while allowing the amendment to the pleadings in the dispute under section 91, shall apply the principles enunciated by the High Courts and Apex Court, while applying the principles of CPC for allowing the parties to amend the pleadings.

9.2 At this stage I would like to make reference to the notification issued by the High Court on 11.12.2003. I am conscious of the fact that the said notification would not apply to the present case. However, it would certainly benefit the Co-operative Courts while dealing with the dispute under section 91 of the Act. The notification has been issued by the High Court in exercise of the powers under Article 227 and 235 of the Constitution of India by virtue of which, the provisions of Civil Manual, mutatis mutandis, is made applicable to the Maharashtra State Co-operative Courts. Chapter V of the Civil Manual deals with the pleadings. Rule 79 of Chapter V of the Civil Manual speaks of the amendment of the pleadings under Rule 17 of Order 6 of CPC.

Therefore, since this court specifically has made the Civil Manual applicable to the Co-operative Courts including Rule 79 under Chapter V therein which deals with the pleadings, amendments to the plaint are permitted by the Co-operative Court.

10. I will now like to examine the submissions of Mr.Sakhare, learned counsel for the society. He invited my attention to the application dated 10.2.1986 and contended that under the guise of subsequent events the firm has attempted to fill in the lacunas in the dispute that was filed in 1974. I perused the application and in particular paragraph 3 thereof. Paragraph 3 of the application reads thus :

> "3. I say that the aforesaid dispute was filed as far back as October 1973. Subsequently, certain events have taken place. It has become necessary and expedient to amend the dispute with a view to bring all the facts on record to decide all the issues involved in the dispute effectively and completely. I say no prejudice will be caused to the opponents

if such an amendment is made".

11. Mr.Sakhare submits that in the schedule of amendments not a single event is being incorporated which could be termed as subsequent event. Moreover, there was a long delay in making the application seeking amendment in the dispute. I have carefully considered the submissions of Mr.Sakhare and perused the schedule of amendments and a copy of the dispute. It is clear from the schedule of amendments that why it becomes necessary and expedient to amend the dispute. The society was not taken by surprise. The courts below applied their mind to the schedule considering every paragraph of the amendment carefully and allowed it partly. Considering the nature of the amendments it cannot be said that the firm has attempted to fill in the lacunas in the original pleadings. Both the courts below have concurrently held that the amendments which are allowed would not change the nature of the dispute and are necessary to settle the dispute finally between the parties. Mr.Sakhare invited my attention to paragraph 9(f) and prayer clause (b)(vii) of the schedule of amendments contended that such prayer cannot be made as it is hopelessly

time barred. As observed earlier, the court while deciding the application seeking amendment are not expected to adopt hypertechnical approach. In **Sampath Kumar's** case (supra) it is clearly held that an amendment once incorporated relates back to the date of the suit and in appropriate cases the court is competent while permitting an amendment to direct that the amendment permitted by it shall not relate back to the date of the suit and to the extent permitted by it shall be deemed to have been brought before the court on the date on which the application seeking the amendment was made. Keeping this is view the amendment sought in paragraph 9(f) and prayer clause b(vii) in particular of the Schedule of amendments will be subject to limitation or deemed to have been brought before the Court on the date on which the application seeking amendment was made. Similarly, it may be noticed that though the dispute was filed in 1973 it moved with pace of snail and further the firm, which filed the instant dispute, obtained stay to further proceedings in the petition which cannot be termed as causing deliberate delay in the progress of the case. The amendment of the pleadings can be allowed at any stge of the proceedings as long as it is not prejudical to the

rights of other side and it does not change the nature or touch the substratum of the dispute. In result Writ Petition No.1915 of 1987 is dismissed.

12. In so far as the firm's Writ Petition bearing No.1585 of 1987 against the orders rejecting the amendment sought as per paragraphs 9(b) and (c) of the schedule of amendments is concerned, I find absolutely no reason to interfere with the orders of the Courts below. After having heard Mr.Jahagirdhar, learned senior counsel for the petitioners and having perused paragraphs (b) and 9(c) of the schedule of amendments I am satisfied that by not allowing those amendments no prejudice whatsoever is caused to the firm. The Courts below have considered the amendments sought in the aforestated paragraph in proper perspective and have rightly rejected observing that the interest of respondent nos.10 to 16 has already been taken care of and protected by the firm in its pleadings. Moreover, those respondents have not come forward seeking to join them as party to the dispute. It was further held that if the firm succeeds in the instant dispute it can take care of the interest of respondent nos.10 to 16 and,

therefore, their presence in the instant proceedings is not necessary. In so far the averments sought to be introduced as per paragraph 9(b) of the schedule of the amendment, regarding signing of the written statement is concerned, in my opinion, the contentions raised therein can be advanced at the time of final arguments. The observations in paragraph 2 made by the Appellate Court while affirming the findings recorded by the court below clearly demonstrates that the amendment sought as per paragraph 9(b) and 9(c) of the schedule of the amendments was rightly rejected and it would not cause any prejudice whatsoever either to the firm or to respondent nos.10 to 16. Keeping that in view I find no reason to interfere in the impugned orders passed by the courts below rejecting the amendment sought in paragraph 9(b) and 9(c) and consequential amendments sought in other paragraphs concerning respondent nos.10 to 16 in Writ Petition No.1585 of 1987. In the circumstances, this petition also stands dismissed.

13. Considering that dispute bearing No.ABN/CC-II/1870 of 1973 is pending since 1973 the Co-operative Court is directed to dispose of the

same as expeditiously as possible and preferrably within period of one year from today. The parties are directed to co-operate an early disposal of the dispute.

(D.B.Bhosale, J.)

HIGH COURT AT BOMBAY
CIVIL APPELLATE SIDE

WRIT PETITION NO.1915 OF 1987
ALONGWITH
WRIT PETITION NO.1585 OF 1987

Date of Decision: 8th September, 2004

For approval and signature:

The Hon'ble Mr. Justice : D. B. BHOSALE

1. Whether Reporters of Local papers may be allowed to see the judgement ?

2. To be referred to the Reporter or not?

3. Whether Their Lordships wish to see the fair copy of the judgement?

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950, or any Order made thereunder?

5. Whether it is to be circulated to the Civil Judges?

6. Whether the case involves an important question of law and whether a copy of the judgment should be sent to Nagpur Office?